

## **REMARKS**

Claims 1-46 are now pending in the application. Applicants have amended Claim 24 to include creating a continuous play program for a playback control device via a website. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 112**

Applicants respectfully traverse the rejection of Claims 6-13 and 29-35 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention.

Referring to Claim 6, Applicants have amended Claim 6 to include “relative percentages of time at which digital media files from respective collections are played”, in order to further define the allocated percentages. Applicants believe the rejection of Claim 6 under 35 U.S.C. § 112, second paragraph, is now moot.

Referring to Claim 29, the arguments made above with respect to Claim 6 are equally applicable to Claim 29. Therefore, Applicants believe that the rejection of Claim 29 under 35 U.S.C. § 112, second paragraph, is also now moot. Claims 8-13 and Claims 31-35 depend directly or indirectly from Claims 6 and 29, respectively. Therefore, Applicants believe that the rejection of Claims 8-13 and 31-35 is also now moot for the reasons cited above.

Referring to Claim 7, Applicants have amended Claim 7 to include increasing or decreasing “the relative frequency at which” digital media files within predetermined collections are played. The frequency is relative to the frequencies at which other digital

media files in the same predetermined collection are played. Applicants believe the rejection of Claim 7 under 35 U.S.C. § 112, second paragraph, is now moot. Referring to Claim 30, the arguments made above with respect to Claim 7 are equally applicable to Claim 30. Therefore, Applicants believe that the rejection of Claim 30 under 35 U.S.C. § 112, second paragraph, is also now moot.

#### **REJECTION UNDER 35 U.S.C. § 102**

Applicants respectfully traverse the rejection of Claims 1, 2, 4, 8-12, 14, 16, 17, 19-25, 27, 31-35, 37, 39, 40, and 42-46 under 35 U.S.C. § 102(b) as being anticipated by Krikorian (U.S. Pat. No. 5,726,909).

Referring to Claim 1, Krikorian does not show, teach, or suggest a web server that is connected to a distributed communications system and to a master library of digital media files, wherein a computer accesses the web server via the distributed communications system to alter a continuous play program for a playback control device.

Krikorian teaches a continuous play broadcast system that includes a central computer and multiple end user computers (col. 3, line 4). The central computer stores master libraries of songs, announcements, and graphics and communicates with the end user computers across a computer network. Subset pluralities of the songs, announcements, and graphics from the central computer are retrieved by and stored in the end user computers (col. 3, line 62). Users of the end user computers customize continuous play programs based on respective subset pluralities of the songs, announcements, and graphics. During normal operations, requests for the central

computer such as musical selection updates are queued by the end user computers (col. 4, line 39). The central computer periodically communicates with the end user computers to detect and process the requests.

The end user computers do not access the central computer to alter respective continuous play programs, as required by the claims. Krikorian teaches that the end user computers communicate with the central computer to submit requests such as additions to the subset pluralities of songs, announcements, and graphics (col. 4, line 65). However, respective continuous play programs remain locally stored on the end user machines. Therefore, users of the end user machines alter the continuous play programs without connecting to the central computer.

In other words, in the system taught by Krikorian, only a user that is in the same physical location as an end user computer can alter a continuous play program that is associated with the same end user computer. This prevents a user from altering a continuous play program for an end user computer when the user is located remotely from the end user computer. Additionally, a user cannot create a single continuous play program that is associated with multiple end user computers.

On page 2, line 1 of the Application, Applicants teach that franchise owners may wish to strictly control the music, video, and announcements that play within their franchise facilities. Therefore, Applicants teach accessing a web server with a computer to create continuous play programs that are downloaded to playback control devices. The playback control devices then locally execute the continuous play programs to provide customized music, announcements, and/or video. A user alters the continuous play program by accessing the web server with the computer. This allows

the playback control device to be a stand-alone device, which reduces costs associated with peripheral connections to the playback control device. This also reduces the risk of unauthorized tampering with the playback control device. Unlike the system taught by Krikorian, Applicants teach that a user may design a continuous play program for one or more playback control devices. This allows the computer to be located in a different facility than the playback control devices or in the same facility as one or more of the playback control devices.

Claims 2-23 depend directly or indirectly from Claim 1 and are allowable over Krikorian for the same reasons.

Referring to Claim 24, Krikorian does not show, teach, or suggest accessing and arranging at least one of digital media files and predetermined collections of the digital media files to create a continuous play program for a playback control device via a website.

The arguments made above with respect to Claim 1 are equally applicable to Claim 24. The end user computers taught by Krikorian do not access the central computer to alter respective continuous play programs. Respective continuous play programs remain locally stored on the end user machines. Only a user that is in the same physical location as an end user computer can alter a continuous play program that is associated with the same end user computer.

Claims 25-46 depend directly or indirectly from Claim 24 and are allowable over Krikorian for the same reasons.

## CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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